



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/07803/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On April 13, 2015**

**Determination
Promulgated
On April 23, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR IRFAN BRAQI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Heller, Counsel, instructed by Barnes Harrild
&

Dyer Solicitors

For the Respondent: Mr Tarlow (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a national of Albania who is almost twenty years of age. The appellant entered the United Kingdom on June 18, 2012. He entered without a valid passport or travel document and claimed

asylum on June 28, 2012. The respondent refused his asylum application on July 19, 2013 and on the same date a decision was taken to remove him from the United Kingdom.

2. The appellant appealed that decision on August 19, 2013 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. The appeal originally came before Judge of the First-tier Tribunal Prior on September 17, 2013 and in a decision promulgated on September 25, 2013 he refused the appeal on all grounds. The appellant appealed that decision and on October 21, 2013 Judge of the First-tier Tribunal Cruthers gave permission to appeal and the matter next came before Deputy Upper Tribunal Judge Campbell on December 2, 2013. In a determination dated June 6, 2014 he found there had been an error in law and remitted the matter back to the First-tier Tribunal with no findings preserved.
4. The case was thereafter listed before Judge of the First-tier Tribunal Wright (hereinafter referred to as "the FtTJ") on December 5, 2014 and in a determination promulgated on December 23, 2014 he refused the appellant's appeals on all grounds. The appellant lodged grounds of appeal on January 19, 2015 and on January 29, 2015 Judge of the First-tier Tribunal Heynes gave permission to appeal finding it arguable that the FtTJ's treatment of the credibility issues constituted an error in law.
5. The matter came before me on the above date and the parties were represented as set out above. The appellant was present.

ERROR OF LAW SUBMISSIONS

6. Mrs Heller relied on her lengthy grounds of appeal and further expanded on them at the above hearing. She submitted the FtTJ had failed to properly have regard to the country guidance decision of EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) and this led him to fall into error. Additionally, she submitted:
 - a. Grounds One and Nine The FtTJ failed specifically to have regard to the history of the alleged feud, the notoriety of the alleged killing, the numbers killed, the length of time since the last death or the relationship of the last person killed to the ability of the other party's family to locate the appellant in a different area. The person concerned was a mayor of his municipality and had far greater influence because he would, by implication, have more contacts.
 - b. Ground Two The FtTJ failed to have regard to the background evidence that had been submitted.
 - c. Ground Three It was accepted that the other grounds fell away unless this ground succeeded because if the FtTJ was entitled to reach the findings he did on the

facts of the case then there would be no risk. However, Mrs Heller submitted the FtTJ did not have an even-handed approach to the evidence because he made findings without a full consideration of the evidence. For example, in paragraph [9] of his determination the FtTJ reflected on the refusal letter and put his own comments (before considering all the evidence) about certain events. The FtTJ failed to take into account newspapers also misspelt the surnames and his comments on the letter from the police and the PRMA are unfair because the appellant would have been criticised if no letter was produced but he is criticised because a letter was produced. The FtTJ acted unfairly.

- d. Grounds Four and Five Whilst the FtTJ stated he took into account the appellant's it is submitted he failed to have regard to the age of the appellant when the incidents occurred. The appellant's age is highly significant and explains some of the discrepancies including the one-month discrepancy in the appellant's travel claim.
 - e. Ground Six The FtTJ failed to give reasons to support his claim that Bashkim Shabaj did break the reconciliation/truce and the appellant's lack of knowledge should not be held against him.
 - f. Ground Seven Whilst the FtTJ made adverse findings on two documents at paragraph 33(xx) of his determination because they were produced late it had been open to him to adjourn the case to allow the respondent time to check the documents.
 - g. Ground Eight The FtTJ only produced part of the appellant's account and the explanation given was plausible. Whilst the FtTJ made findings on implausibility it is submitted that the FtTJ failed to have regard to the fact the appellant claimed he was isolated. Under the Rules of Kanun he is entitled to protection and Mrs Heller submitted the FtTJ concentrated on peripheral matters and ignored the core of the claim namely the blood feud.
 - h. The grounds are not a mere disagreement and the decision should be set aside.
7. Mr Tarlow relied on the Rule 24 letter dated February 13, 2015. Whilst the determination is not easy to read the FtTJ demonstrated a clear grasp of the facts and at paragraph [33] set out three pages of inconsistencies in the appellant's claim. The comments made by the FtTJ are not inappropriate as they merely reflected his view on the case and he did give detailed reasons for rejecting the claim. The findings were not perverse and were clearly open to him. The FtTJ had regard to

the country guidance decision of EH and the findings were all open to him.

8. I reserved my decision but indicated that if there were an error then the matter would be remitted back to the first-tier for a fresh hearing.

ANALYSIS AND FINDINGS

9. Both representatives agreed that the key issue in this case is whether the FtTJ was entitled to make the credibility findings that he did because if he was then the argument relating to possibly non-compliance with guidelines in EH would have no relevance or bearing on the case.
10. This was the appellant's second appeal before the First-tier Tribunal and when it came before the FtTJ his appeal was dismissed. Mrs Heller has argued that the FtTJ erred and Mr Tarlow maintains the FtTJ made findings that were open to him and gave ample reasons for his findings.
11. This was an extremely detailed determination and whilst I agree with Mr Tarlow that the determination could be difficult to follow I am satisfied for the reasons I will give that the FtTJ dealt with all relevant matters and had regard to all issues that were argued before him. It follows therefore that I find no error in law.
12. The FtTJ acknowledged in paragraph [2] of his determination that the hearing was to be heard afresh following the setting aside of the original decision. The FtTJ proceeded to set out the background to the case albeit inserting at various points of his determination some general observations.
13. Mrs Heller has argued (Ground Three of the grounds) that these observations mean the determination is defective and should be set aside because in her words the FtTJ was putting "the cart before the horse". However, I am satisfied that these observations can properly be cross-referenced to his subsequent findings on the appellant's claim particularly at paragraph [33]. The determination needs to be read as a whole. The Tribunal has on numerous occasions emphasised there is no need for a forensic examination of all the facts and there is no requirement on the FtTJ to make findings on each and every part of an appellant's case.
14. Mrs Heller's has not taken issue with the FtTJ's summary of the evidence and FtTJ has set out at paragraphs [8] and [17] the appellant's case and at paragraphs [10], [18] and [19] the respondent's refusal letter and details of the cross-examination that was conducted at the hearing. The FtTJ went on to make clear that in considering the appellant's case he had regard to the grounds of appeal (paragraph [11]) and the documents submitted by both the

appellant and the respondent (paragraphs [12], [13] and [16]). There is no merit to Ground Three of the grounds of appeal.

15. Mrs Heller has advanced in Ground Two of her grounds of appeal that the FtTJ failed to have regard to the background evidence. The FtTJ has demonstrated in his determination that he was aware of all of the documents. He considered the documents submitted by the appellant's representatives as recorded in paragraph [28] of his determination and he subsequently placed that evidence against the guidance given in the country guidance decision of EH. I am satisfied there was no requirement for the FtTJ to set out each document placed before him.
16. At Grounds Four and Five Mrs Heller argued the FtTJ failed to have regard to the appellant's age and in particular his age when some of these incidents are said to have occurred. The FtTJ made clear at paragraphs [31] and [33] of his determination that he has had regard to his age and whilst the FtTJ does not specifically state the appellant's age he went on to make a number of significant findings about his account. The FtTJ was aware of the background including the appellant's age when some of these incidents occurred but he did not base his findings on the appellant's account alone but also on the basis of other evidence placed before the Tribunal. I do not accept the FtTJ failed to have regard to the appellant's age.
17. In Ground Six of her grounds of appeal Mrs Heller has argued that the FtTJ failed to give reasons to support his claim that Bashkim Shabaj did break the reconciliation/truce. The FtTJ considered the appellant's whole claim in 34 sub-paragraphs of paragraph [33] of his determination and his reasons for rejecting the claim are explained in some detail. The findings at sub-paragraphs 14 and 16 are made after consideration of the whole of the evidence and the FtTJ is entitled to consider the evidence in the round. There is no error in his approach to this aspect of the evidence.
18. Mrs Heller criticised, in Ground Seven of her grounds of appeal, the FtTJ for adopting the approach he took in sub-paragraph 20 of paragraph [33]. However, the FtTJ gave reasons for rejecting the evidence and those reasons were open to him. They were neither unreasonable nor perverse. There is no evidence that the FtTJ was invited to adjourn the case but in any event the FtTJ was entitled to adopt the approach he did and attach such weight, as he felt appropriate to the evidence.
19. Mrs Heller's Ground Eight is nothing more than a mere disagreement to the FtTJ's findings. The FtTJ referred to the evidence in making his findings and cross referenced, in his determination, the evidence on numerous occasions.
20. Having considered those grounds of appeal I considered Grounds One and Nine of the grounds of appeal. Mrs Heller accepted that if the other grounds fell away then her argument on EH would have no merit. The FtTJ made a considerable number of adverse findings and contrary to

Mrs Heller's submissions these findings were open to him. The FtTJ clearly reminded himself about the country guidance case of EH as evidenced by his reference to that case and its conclusions in paragraphs [30] and [32] of his determination. His subsequent findings at paragraph [33] meant he rejected the appellant's claims and found he would not be at risk. I am satisfied he was entitled to make all of the findings he did in paragraph [33] and as Mr Tarlow submitted these grounds are nothing more than a mere disagreement.

21. I therefore find the FtTJ did not materially err in his approach to the appellant's asylum, article 3 or humanitarian protections claims. Article 8 was not pursued in the First-tier Tribunal and does not form part of the arguments before me.

DECISION

22. There was no material error. The original decision is upheld.

23. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to alter that order.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

As I have dismissed the appeal I make no alteration to the fee award.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis